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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

PETER D. POULLOS and AMY
 POULLOS,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

No. C 05-3690 CRB
 E-FILING CASE

**STIPULATION FOR COMPROMISE
 SETTLEMENT AND RELEASE AND
~~PROPOSED~~ ORDER**

IT IS HEREBY STIPULATED by and between each of the undersigned plaintiffs
 (meaning any person -- other than the plaintiffs' counsel and the defendant and its counsel --
 signing this agreement waiving and releasing claims or potential claims against the United States,
 whether such person is a party to this civil action or not) and the United States of America, by
 and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any
 kind, whether known or unknown, arising directly or indirectly from the acts or omissions that
 gave rise to the above-captioned action under the terms and conditions set forth in this
 Stipulation For Compromise Settlement And Release (hereinafter "Stipulation").

2. This Stipulation is not, is in no way intended to be, and should not be construed
 as, an admission of liability or fault on the part of the United States, its agents, servants, or

employees, and it is specifically denied that they are liable to the plaintiffs. This settlement is entered into by all parties for the purpose of compromising disputed personal injury claims under the Federal Tort Claims Act and avoiding the expenses and risks of further litigation.

3. The United States of America agrees to pay the cash sum of Three Million Dollars (\$3,000,000.00) (hereinafter "settlement amount") in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, including any claims for fees, interest, costs, and expenses, arising from, and by reason of, any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, death, or damage to property, and the consequences thereof, which the plaintiffs or their heirs, executors, administrators, or assigns may have or hereafter acquire against the United States, its agents, servants, and employees on account of the same subject matter that gave rise to the above-captioned action.

4. The United States agrees to pay the settlement amount specified in Paragraph 3, above, on the following terms and conditions:

a. Within three business days after counsel of record for the United States receives (i) this Stipulation signed by all parties to said document; (ii) a court Order approving the settlement on behalf of each legally incompetent adult or minor required to sign this Stipulation waiving and releasing claims or potential claims against the United States; (iii) the Social Security number or tax identification number of each plaintiff; (iv) a fully executed waiver and release from each State, private entity, or private individual for any and all past, present, and future claims or liens for reimbursement or payment any such State, private entity, or private individual may have arising from any benefits or payments made to or on behalf of PETER D. POULLOS and AMY POULLOS by any such State, private entity, or private individual; (v) a fully executed waiver and release from any State, private entity, or private individual who has or may have now or in the future a claim or cause of action against the United States (and its agents, servants, and employees) arising out of the subject matter of the above-captioned action, including any claim for contribution, indemnification, or subrogation; and (vi) an authorization by the Attorney General or his designee to conclude negotiations and to consummate the

1 settlement, counsel for the United States will send a formal request to the Department of the
2 Treasury that the settlement amount of Three Million Dollars (\$3,000,000.00) be paid as
3 provided in subparagraph 4.b., below.

4 b. The United States shall pay to Plaintiffs PETER D. POULLOS and AMY
5 POULLOS and their attorney, John Farrell, the collective sum of \$3,000,000.00 (three million
6 dollars and no cents) in cash. Payment shall be made by wire transfer to an account to be
7 designated by plaintiffs' attorney.

8 c. With respect to the payment of the settlement amount, the United States
9 will not sign any annuity applications or uniform qualified settlement forms or any equivalent
10 forms, nor will the United States pay the settlement amount into a qualified settlement fund or its
11 equivalent. Plaintiffs and their attorneys agree that neither they nor their representatives or
12 agents will use any portion of the settlement amount to either (i) purchase or attempt to purchase
13 a structured settlement annuity or a qualified settlement annuity or (ii) place or deposit or attempt
14 to place or deposit any portion of the settlement amount in a qualified settlement fund or account
15 or their equivalent, such as a 468B fund or account. Once the plaintiffs have cashed their
16 Treasury wire transfer, there is nothing in this subparagraph 4.c. that precludes the plaintiffs from
17 using the proceeds from the wire transfer to either (i) purchase a standard, non-structured
18 settlement annuity or non-qualifying settlement annuity or (ii) fund a Special Needs Trust, but
19 they do agree that they will not represent to any person, entity, or agency (federal, state, or local)
20 that they are purchasing structured settlement annuities.

21 d. The parties agree that any attorneys' fees owed by the plaintiffs in this
22 action against the United States shall not exceed 25% of the settlement amount (28 U.S.C. §
23 2678). The parties agree that any fees for legal services, including guardian ad litem fees,
24 incurred in this litigation or in obtaining any court approval of this settlement shall be considered
25 attorneys' fees and not costs, and shall be subject to the provisions of 28 U.S.C. § 2678. The
26 parties further agree that any such attorneys' fees, along with any costs and expenses of said
27 action against the United States, and any costs, expenses, or fees (including legal fees) associated
28 with obtaining any court approval of this settlement, will be paid out of the settlement amount

1 and not in addition thereto.

2 e. The plaintiffs stipulate and agree that they are legally responsible for any
3 and all liens or claims for payment or reimbursement, including any liens or claims by Medicaid
4 or Medicare. Plaintiffs and their attorneys stipulate and agree that the plaintiffs, by and through
5 their attorneys, will satisfy or resolve any and all liens or claims for payment or reimbursement
6 asserted by any individual or entity before distributing to plaintiffs any portion of the settlement
7 amount. The plaintiffs and their attorneys further agree that plaintiffs' attorneys shall, within ten
8 (10) days of paying or resolving each such lien or claim for payment or reimbursement, provide
9 to the United States evidence that such lien or claim has been satisfied or resolved and that the
10 lienholder or claimant has waived and released its lien or claim. The evidence required by the
11 terms of this Paragraph may be satisfied by a letter from plaintiffs' attorneys representing to
12 counsel for the United States that each such lien or claim has been satisfied or resolved and that
13 each such lienholder or claimant has waived and released its lien and claim.

14 5. Plaintiffs and their guardians, heirs, executors, administrators, or assigns do
15 hereby accept the settlement amount and the terms and conditions of this Stipulation in full
16 settlement and satisfaction of any and all claims, demands, rights, and causes of action of
17 whatsoever kind and nature, including any claims for fees, interest, costs, and expenses, arising
18 from, and by reason of, any and all known and unknown, foreseen and unforeseen, bodily and
19 personal injuries, death, or damage to property, and the consequences thereof, which the
20 plaintiffs or their heirs, executors, administrators, or assigns may have or hereafter acquire
21 against the United States, its agents, servants, and employees on account of the same subject
22 matter that gave rise to the above-captioned action. Plaintiffs and their guardians, heirs,
23 executors, administrators, and assigns do hereby further agree to reimburse, indemnify, and hold
24 harmless the United States and its agents, servants, and employees from and against any and all
25 such claims, causes of action, liens, rights, or subrogated or contribution interests incident to, or
26 resulting or arising from, the acts or omissions that gave rise to the above-captioned action.

27 6. This compromise settlement is specifically subject to each of the following
28 conditions:

1 a. The Attorney General or the Attorney General's designee must approve
2 the terms of the settlement and authorize the attorney representing the United States to negotiate
3 and consummate a settlement for the amount and upon the terms and conditions agreed upon by
4 the parties, as set forth in this Stipulation.

5 b. The parties must agree in writing to the terms, conditions, and
6 requirements of this Stipulation. The parties stipulate and agree that the Stipulation and the
7 compromise settlement are null and void in the event the parties cannot agree on the terms,
8 conditions, and requirements of this Stipulation. The terms, conditions, and requirements of this
9 Stipulation are not severable and the failure to agree, fulfill, or comply with any term, condition,
10 or requirement renders the entire Stipulation and the compromise settlement null and void. The
11 United States will not seek approval from the Attorney General or his designee unless and until
12 the parties have agreed to the terms and conditions of this Stipulation.

13 c. Plaintiffs must obtain at their expense an Order by a court of competent
14 jurisdiction approving the terms of the settlement on behalf of any minor child of PETER D.
15 POULLOS and AMY POULLOS (whether by blood or adoption), and any incompetent adult
16 being required to sign this Stipulation. In the event any such person is not a party to this action,
17 the plaintiffs must obtain any such court Order from a state court of competent jurisdiction. Any
18 such court Order must expressly require plaintiffs to obtain, at their expense, waivers and
19 releases from any State, private entity, or private individual who has or may have now or in the
20 future a claim or cause of action against the United States (and its agents, servants, and
21 employees) arising out of the subject matter of the above-captioned action. Any such court Order
22 must also expressly require plaintiffs, through their attorneys, to pay or resolve any and all liens
23 or claims for payment or reimbursement, including any liens or claims by Medicaid or Medicare,
24 before their attorneys may distribute any portion of the settlement amount to the plaintiffs and
25 further require plaintiffs, through their attorneys, to provide to the United States the evidence that
26 such lien or claim has been satisfied or resolved as required by this Stipulation. The terms of any
27 such Order required by this Paragraph 6.c. must be approved by the Department of Justice's Torts
28 Branch prior to being submitted to any reviewing court and any such Order signed by such court

1 cannot be changed by the court or parties without the prior written consent of the Torts Branch.
2 Plaintiffs agree to obtain such court Order or Orders in a timely manner: time being of the
3 essence. Plaintiffs further agree that the United States may void this settlement at its option in
4 the event any such court Order is not obtained with respect to each party to this action and each
5 non-party to this action in a timely manner. In the event plaintiffs fail to obtain any such court
6 Order, the entire Stipulation and the compromise settlement are null and void. The United States
7 will not seek approval from the Attorney General or his designee unless and until the plaintiffs
8 have obtained all such court Orders.

9 d. Plaintiffs must obtain a waiver and release from any State, private entity,
10 or private individual who has or may have now or in the future a claim or cause of action against
11 the United States (and its agents, servants, and employees) arising out of the subject matter of the
12 above-captioned action. For purposes of this Stipulation, a claim or cause of action includes, but
13 is not limited to, a claim or cause of action for reimbursement for any payments made to or on
14 behalf of the plaintiffs, a claim or cause of action for reimbursement for any goods or services
15 provided to or on behalf of the plaintiffs, and a claim or cause of action for contribution,
16 indemnification, or subrogation. Plaintiffs must disclose the terms and conditions (whether
17 written or otherwise) of any agreement between the plaintiffs (individually or collectively) and
18 any individual or entity to pay money or to pay or provide any other type of consideration to, or
19 on behalf of, any of the plaintiffs. The United States will not seek approval from the Attorney
20 General or his designee unless and until the plaintiffs have obtained all such waivers and releases
21 and provided the terms and conditions of any such agreement between plaintiffs (individually or
22 collectively) and any individual or entity to pay money or to pay or provide any other type of
23 consideration to, or on behalf of, any of the plaintiffs. The terms of any such waiver and release
24 required by this Paragraph 6.d. must be approved by the Department of Justice's Torts Branch.

25 7. Plaintiffs' complaint against the United States of America in this action shall be
26 dismissed with prejudice. In consideration of the terms enumerated herein and above in
27 paragraph 1, Plaintiffs PETER D. POULLOS and AMY POULLOS agree that, within five days
28 from notification by the US Attorney's Office that the settlement amount is available, Plaintiffs'

1 counsel will execute and forward to Assistant United States Attorney Owen P. Martikan for
2 execution and filing with the court a stipulation for dismissal with prejudice in a form mutually
3 agreeable to the parties. AUSA Martikan will execute and file the stipulation of dismissal within
4 five days of his receipt thereof. On the date that the dismissal is filed, the settlement amount
5 shall be delivered to Plaintiff's counsel.

6 8. Plaintiffs PETER D. POULLOS and AMY POULLOS do hereby release and
7 forever discharge the United States and any and all of its past and present officials, employees,
8 agents, attorneys, their successors and assigns, from any and all obligations, damages, liabilities,
9 actions, causes of actions, claims and demands of any kind and nature whatsoever, whether
10 suspected or unsuspected, at law or in equity, known or unknown, arising out of the allegations
11 set forth in Plaintiffs' pleadings in this action, including potential future claims for wrongful
12 death.

13 9. California Civil Code Section 1542 provides as follows:

14 A general release does not extend to claims which the creditor does
15 not know or suspect to exist in his favor at the time of executing
16 the release, which if known by him must have materially affected
his settlement with the debtor.

17 Plaintiffs PETER D. POULLOS and AMY POULLOS have been apprised of the statutory
18 language of Civil Code Section 1542 by their attorney, and fully understanding the same,
19 nevertheless elect to waive the benefits of any and all rights they may have pursuant to the
20 provision of that statute and any similar provision of federal law. Plaintiffs PETER D.
21 POULLOS and AMY POULLOS understand that, if the facts concerning their injuries and the
22 liability of the government for damages pertaining thereto are found hereinafter to be other than
23 or different from the facts now believed by them to be true, this Agreement shall be and remain
24 effective notwithstanding such material difference.

25 10. This instrument shall constitute the entire agreement between the parties, and it is
26 expressly understood and agreed that the Agreement has been freely and voluntarily entered into
27 by the parties hereto with the advice of counsel, who have explained the legal effect of this
28 Agreement. The parties further acknowledge that no warranties or representations have been

made on any subject other than as set forth in this Agreement. This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by all of the parties or their authorized representatives.


11. The parties agree that this Stipulation, including all the terms and conditions of this compromise settlement and any additional agreements relating thereto, may be made public in their entirety, and the plaintiffs expressly consent to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

12. It is contemplated that this Stipulation may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

IT IS SO STIPULATED.

For Plaintiffs Peter D. Poulos and Amy Poulos.

DATED: 4/2/07


PETER D. POULLOS
Plaintiff

DATED: 4/2/07


AMY POULLOS
Plaintiff

DATED: 4-1-07


[Insert Peter Poulos' father here]
Plaintiff's father DEAN POULLOS

DATED: 4/1/07


[Insert Peter Poulos' mother here]
Plaintiff's mother

Carol Poulos

LAW OFFICES OF JOHN FARRELL

DATED: _____

By:


JOHN FARRELL

1 For Defendant The United States of America.

2
3 DATED: 4/6/07

By:

SCOTT N. SCHOOLS
United States Attorney

OWEN P. MARTIKAN
Assistant United States Attorney

5 **[PROPOSED] ORDER**

6 Pursuant to stipulation, IT IS SO ORDERED.

7 DATED: May 21, 2007

